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From the Minister for Biodiversity, Landscape and Rural Affairs
Barry Gardiner MP

Dear Stakeholder

Re: The Animals Act 1971 and its implications regarding strict liability for animal owners

I am writing to draw your attention to a recent proposal, introduced before Parliament under the Ten Minute Rule arrangements for Private Members' Bills, regarding the Animals Act 1971 and its implications for the owners of horses and other animals with the potential to cause damage. This proposal seeks an amendment to the Act to allow for 'a defence of reasonable care' where such damage occurs, and I should like to offer your organisation the opportunity to comment on this proposed change in the law at this early stage.

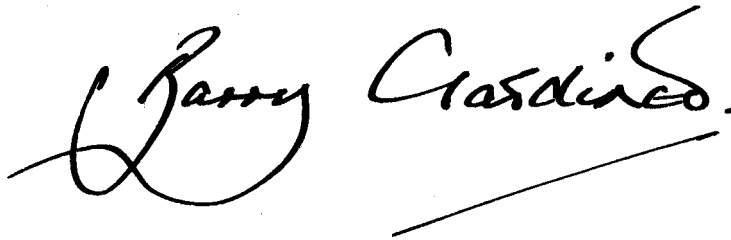
The Animals Act 1971 covers owners' liability for damage done by animals. A House of Lords' judgment in 2003 (*Mirvahedy v Henley*), concerning injury caused by spooked horses, overturned previous interpretations of the Act and confirmed that strict liability applies to the keeper of animals that cause harm. In effect, the owner of the animal is liable for damage caused regardless of any actions they may have taken to limit the risk of such damage. It has been suggested that the application of strict liability in these circumstances is out of line with other areas of the law where legal liability can be mitigated by the taking of reasonable precautions. The Country Land and Business Association and the British Horse Society have campaigned to amend the Act, and the most recent development in this campaign is the tabling of a Ten Minute Rule bill by Laurence Robertson MP on 12 July. The Bill is scheduled to have its second reading on 20 October.

Mr Robertson's Ten Minute Rule bill has been tabled under his own initiative, and does not currently have Defra's formal support. The timing of Mr Laurence's proposal and the nature of Ten Minute Rule bills also suggest that this particular legislative vehicle may not succeed. However, the Government is aware of the importance that the horse industry places on this issue, and expects that efforts will continue to secure a change in the law. Defra is, therefore, keen to elicit views from a wide range of stakeholders on whether the introduction of a defence of reasonable care might be acceptable in principle. Defra is clear that any change in the law must not absolve the owners of horses or other animals



from their responsibility to take every reasonable effort to prevent the occurrence of damage and that full liability for such damage should still apply in any cases where negligence is proven.

Please could you forward any comments you have on this proposal to Amy Westaway at Defra, Area 2D, Ergon House, Horseferry Road, London, SW1P 2AL by 20 October. If you have any queries or would like to discuss this further please do not hesitate to contact Tony Williamson on tony.t.williamson@defra.gsi.gov.uk or by telephone at 020 7238 5640.

A handwritten signature in black ink that reads "Larry Cardine." The signature is written in a cursive style with a long horizontal stroke underneath the name.

STRICT LIABILITY

BRITISH DRIVING SOCIETY RESPONSE TO CONSULTATION ON ANIMALS ACT 1971

The British Driving Society (BDS) is the national organisation responsible for all harness horse and carriage driving activities in the UK. Harness horse driving has an excellent safety record, and all official BDS activities are organised with Health & Safety in mind.

Harness horses are, proportionally, one of the major equestrian users of the public highway – we do not normally drive carriage cross-country, except for competition purposes. As this consultation highlights the case of *Mirvahedy v Henley*, which was a case of a loose horse colliding with a motor vehicle on the public highway, we presume that the issue of horses on the public highway is one of the major issues which needs to be addressed, although we obviously also need to bear in mind that liability currently lies in anything a horse (or other animal) does which causes injury or damage.

The Animals Act 1971 was intended to simplify the common law rules for strict liability in tort for damage done by animals. Unfortunately, in an effort to be all-embracing and non-specific, it causes more confusion and potential sources of injustice than it solves.

The Law Commission in their report, referred to in Para 35 of the House of Lord Judgement upon which the Animals Act was founded, appears to have based their thinking upon dogs, which may not normally be dangerous, but which, as a species, have a propensity to attack under certain circumstances. However, it seems perverse to then go on to apply this to horses, which have virtually no propensity to attack humans or other animals, and where damage is usually caused by the bulk and speed of the animal, rather than any aggressive tendencies.

Since there are a finite number of normally-kept domestic animal species in the UK, and since each of these species has definite 'normal' behaviour and characteristics, it surely would have been more sensible for the legislation to be species-specific, rather than to attempt a ' one size fits all' piece of legislation.

Thus, it would be reasonable to expect a higher standard of responsibility from the keeper of a dog than from the keeper of a guinea pig, for example, since dogs are known to be capable of causing severe damage by biting, whereas it is hardly feasible that a guinea pig could cause a similar level of damage by an aggressive attack.

The Act seems to hinge upon the inherent dangerousness of a species in general, and upon unusually dangerous behaviour displayed by a particular example of a normally non-dangerous species.

Thus, all adult tigers would always be considered dangerous, because they are large, aggressive carnivores with a propensity to eat people, whereas horses are not generally considered dangerous in the same context because they are not generally aggressive and do not eat people. Therefore, whilst an individual horse has to exhibit an unusual degree of savage behaviour to be regarded as dangerous, a horse might cause a very serious accident if it strays onto the public highway and runs into a car.

The issue is whether or not the keeper of the animal ought to be strictly liable, even if they have taken all reasonable precautions to prevent the horse causing damage, or even if they had no way of preventing damage resulting from the horse's behaviour.

We would point out here that the Act holds the keeper liable, rather than the person responsible for or physically handling the horse at the time of the incident. This is somewhat perverse, since the legal keeper of the horse might not even be present at the incident – for example, if the owner of the horse is away on holiday, and asks a friend to 'keep an eye' on his horses turned out in his field. The friend does not 'have the horse in his possession', yet surely he ought to be responsible if he notices the fence has been broken and does nothing to mend it, resulting in the horses straying.

We would also point out that Clause 6 (3)(b), which makes the 'head of a household' responsible for damage caused to an animal in the possession of a person under the age of 16 is extremely vague. Would the 'head of the household' be the child's father, even though the parents do not live together, or the child's mother, or the senior adult normally resident in the house? How will this be affected by new legislation which prohibits a child under 16 from buying or owning an animal (although not from using the animal)?

With regard to the amplification in 6 (3) referring to the 'person who immediately before that time was the keeper thereof ...' – was it Parliament's intention to make the seller of the horse strictly liable in a case where a horse is put into a horse sale, and escapes, causing damage, due entirely to inadequate fencing at the sale yard? It would seem perverse to make the horse seller liable, yet absolve the sale yard from all responsibility, even though the horse seller was not even present at the sale and had no way of knowing the fencing was broken.

Clearly, it is only in very rare cases that the owner, keeper or handler of an animal has any intent to allow the animal to cause damage. It is difficult to imagine a situation where a horse owner, keeper or handler would intend to cause injury or damage with their horse. A dog owner might use a dog to guard his person or property, or, in the case of a sufficiently irresponsible owner, might urge the dog to attack another person, which would constitute intent.

However, horses are not predatory nor are they used as guard animals, nor do they have any particular propensity to defend their territory nor to attack other people. Unlike a dog, which will frequently respond only to its familiar keeper or handler, most horses are trained in such a way that they will allow themselves to be handled by any stranger who approaches them with the usual horse handling skills.

The problem is that the Animals Act 1971 virtually places some sort of 'intent' upon the animal itself. Whilst it might be argued that a vicious dog might have every 'intention' of biting a person, it can hardly be argued that any horse would intentionally run into a motorcar, any more than a human intentionally runs out into the path of a car; like us, the normal behaviour of the average horse is to avoid contact with motor vehicles.

The purpose of strict liability is to protect the public against social dangers. Typical examples include the selling of contaminated meat, dangerous driving, polluting a river, etc. Strict liability removes the requirement to prove that the perpetrator had not intended to cause the damage, nor even that he had taken all reasonable precautions or had made every possible effort to avoid causing the damage.

To apply this to the horse is fraught with difficulties. Whilst it is clear that the horse owner, keeper or handler should not be absolved from their responsibility to take every reasonable effort to prevent their animals causing damage, it is not reasonable to hold them liable no matter what the circumstances.

For example, if a person rides, drives or leads their horse in a manner which is safe, competent and approved by the British Driving Society or British Horse Society, yet is unfortunate enough to encounter a group of drunken louts who start throwing beer cans at the horse, causing the animal exhibit the perfectly natural behaviour of avoiding injury by shying away from the danger, it is hardly reasonable to hold the horse handler strictly liable for any resultant damage caused by the horse, yet absolve the beer can throwers.

A further instance is one in our recent experience, where an inebriated car driver drove at speed around a corner and hit a horse drawn vehicle which was taking part in an organised BDS drive. The horse driver was thrown out of the vehicle by the impact, fell onto the bonnet of the car and broke both her arms. Her assistant was also thrown out of the vehicle and injured her back. The wheel of the vehicle collapsed, causing the vehicle to fall against the horse, which ran along the road until he was able to take refuge in a nearby garden. The horse damaged the garden fence and various shrubs in the garden. Can it be the intention of Parliament that the horse driver be held strictly liable for the damage caused by this incident, and that the car driver is absolved from liability?

If a large dog gets out of the control of its handler and attacks a small pony which is being correctly driven or ridden on the public highway, and the pony is knocked into the path of a car by the impact of the dog's attack, who is liable for any damage – the dog owner or the horse owner ?

If a horse is being transported in a horsebox which is hit from behind by another motor vehicle, causing the horse to fall out of the tailgate and onto the bonnet of the car following, is it reasonable that the horse owner be held strictly liable for the damage and the car driver absolved ?

The House of Lords Judgement in *Mirvahedy v Henley* dealt with damage caused by a horse straying onto the public highway, despite the fact that the horse owners had taken all reasonable steps to prevent straying – by confining the horse in the field with an electric fence, a wooden fence and vegetation barrier. It is difficult to see what else the owners could have done to prevent the horse getting out of the field. Certainly, the owners did not intend the horse to get out of the field or onto the public highway. Certainly, they were not reckless as to whether the horse escaped.

This Response is available to Government and the general public.

For further information, please contact :

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